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EXAMINER

HIRL, JOSEPH P

ART UNIT

PAPER NUMBER

2121

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,147

Applicant(s)

DAUM, STEVEN B.

Examiner

Joseph P. Hirl

Art Unit

2121

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to an AMENDMENT entered July 20, 2004 for the patent application 10/056,147 filed on January 24, 2002.
2. The First Office Action of April 15, 2004 is fully incorporated into this Final Office Action by reference.

Status of Claims

3. Claims 1, 7 and 15 are amended. Claims 1-23 are pending.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1- 6 and 15-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Albeit trivial, such claims can be implemented using pencil and paper.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Yagesh et al (U. S. Pub. 2003/0171939, referred to as **Yagesh**).

Claim 1

Yagesh anticipates obtaining voluntary consent from a first passenger to perform a background check on the first passenger (**Yagesh**, p 0173; Examiner's Note (EN): voluntary consent is provided upon making of reservation); b) formulating a data record associated with the first passenger if the passenger passes the background check, and storing information from the background check in the data record (**Yagesh**, p 0173; Fig. 6); c) obtaining biologically oriented identification data associated with the first passenger (**Yagesh**, Fig. 6; EN: photo, sex, nationality, etc.); (d) storing the biologically oriented identification data in the data record (**Yagesh**, Fig. 6; EN: PTIDN repository); e) prior to the passenger aircraft flight, obtaining biological oriented measurement data from a person purporting to be the first passenger (**Yagesh**, p 0208; EN: individual questioning will secure biological oriented data, i.e. visual identification, voice stress, etc.); f) comparing the biologically oriented measurement data to the biologically

Art Unit: 2121

oriented identification data (**Yagesh**, p 0209); g) selectively permitting the person to participate in the passenger aircraft flight based on the comparison (**Yagesh**, p 0209; EN: selectively determined based on intelligence data).

Claim 2

Yagesh anticipates step b) further comprises formulating a data record associated with the first passenger if and only if the passenger passes the background check (**Yagesh**, p 0181; EN: passing means to be of interest).

Claim 3

Yagesh anticipates storing, positive screening results data in the data record if and only if the passenger passes the background check (**Yagesh**, p 0181; EN: passing means to be of interest).

Claims 4, 14, 21, 22

Yagesh anticipates step e) further comprises associating the person with a first fractional aircraft owner (**Yagesh**, p 0181, 0116).

Claim 5

Yagesh anticipates c) further comprises scanning a portion of the person to gather the biological oriented measurement data (**Yagesh**, p 0209; EN: a picture represents a scan to gather biological oriented measurement data).

Claim 6

Yagesh anticipates the passenger aircraft flight is one of a set of regular repeating scheduled flights (**Yagesh**, p 0177).

Claim 7

Yagesh anticipates a) a memory (**Yagesh**, Claim 8); b) a communication device (**Yagesh**, Claim 9); c) a processing circuit (**Yagesh**, Claim 8) operable to: formulate and store in the memory a data record associate with a first passenger, the data record including an indication that the first passenger has passed a background check, the data record further including biologically oriented identification data associated with the first passenger(**Yagesh**, Claim 8; p 0209); receive biological oriented measurement data associated with a person (**Yagesh**, p 0209); compare the biologically oriented measurement data to the biologically oriented identification data in the data record (**Yagesh**, Claim 8; p 0208, 0209); and provide an indication signal to the communication device, the communication signal operable to cause the communication device to provide a human perceivable indicia representative of the result of the comparison (**Yagesh**, Claim 9).

Claim 8

Yagesh anticipates the processing circuit includes more than one processor (**Yagesh**, Claim 8).

Claim 9

Yagesh anticipates the processing circuit includes more than one processor connected via network (**Yagesh**, Claim 8; p 0015).

Claims 10, 19, 20

Yagesh anticipates the more that one processors are connected via the Internet (**Yagesh**, p 0015).

Claims 11, 13

Yagesh anticipates the communication device includes a visible display (**Yagesh**, p 0015; EN: computers have visible displays called monitors).

Claim 12

Yagesh anticipates the communication device includes an audible sound generator (**Yagesh**, p 0015; EN: computers have visible displays called monitors with sound generators as standard equipment).

Claim 15

Yagesh anticipates obtaining voluntary consent from a first passenger to perform a background check on the first passenger (**Yagesh**, p 0173; Examiner's Note (EN): voluntary consent is provided upon making of reservation); b) formulating a data record associated with each of the plurality of passengers and storing information from the background check in the data record (**Yagesh**, p 0173; Fig. 6); c) scheduling the passenger aircraft flight as one of a plurality of regular scheduled flights (**Yagesh**, p 0184); (d) prior to the passenger aircraft flight, determining whether a person is associated with a formulated data record (**Yagesh**, Claim 8); e) denying participation by the person in the passenger aircraft flight if the person is not associated with a formulated data record (**Yagesh**, claim 8).

Claim 16

Yagesh anticipates wherein step d) includes: gathering biologically oriented measurement data from the person (**Yagesh**, p 0209); comparing the biologically

Art Unit: 2121

oriented measurement data to biologically oriented identification data previously stored within the data record (**Yagesh**, p 0208; 0209).

Claim 17

Yagesh anticipates a) a memory (**Yagesh**, Claim 8); b) a first processing circuit (**Yagesh**, Claim 8) operable to: formulate and store in the memory a data record associate with a each of a plurality of passenger, each data record including an indication that the associated passenger has passed a background check (**Yagesh**, Claim 8; EN: incorporated into shared data bases); c) a second processing circuit operable to receive a signal from an input circuit indicative of an identification of a person, the person attempting to participate in an aircraft flight (**Yagesh**, Claim 8); determining whether the signal correlates to one of the plurality the data records (**Yagesh**, Claim 8); and provide an indication signal to the communication device, the communication signal operable to cause the communication device to provide a human perceivable indicia representative of the result of the comparison (**Yagesh**, Claim 9).

Claim 18

Yagesh anticipates the first processing circuit and the second processing circuit constitute a single processing device (**Yagesh**, 0015; EN: computers are multiple processing devices).

Claim 23

Yagesh anticipates indication is the existence of the data record (**Yagesh**, Claim 8).

Art Unit: 2121

Response to Arguments

7. The rejection of claims 1-6 and 15-16 under 35 USC 112, first paragraph, is withdrawn.

8. Applicant's arguments filed on July 20, 2004 related to Claims 1-23 have been fully considered but are not persuasive.

In reference to Applicant's argument:

Claims 1-6 and 15-16 were rejected under 35 U.S.C. §101, allegedly because the claimed invention is directed towards non-statutory subject matter. The Examiner alleges that the "language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to technological art, environment or machine which would result in a practical application producing a concrete, useful and tangible; result to form the basis statutory . subject matter under 35 U.S.C. §101."

With respect to claim 1, it is respectfully submitted that the Examiner has mischaracterized claim 1. Claim 1, as amended, specifies a method of screening passengers for a passenger aircraft flight. According to the method specified by claim 1, a background check is performed on a passenger after first obtaining the passenger's consent, and a data record associated with the passenger is formed. Then, biologically oriented identification data associated with a passenger is obtained and stored in the data record. Then, prior to a passenger aircraft flight, biologically oriented measurement data is obtained from a person purporting to be the passenger, the biologically oriented measurement data is compared to the biologically oriented identification data, and the person is permitted to participate in the aircraft flight based on the comparison.

Claim 1, therefore, specifies a method of screening passengers that utilizes a data record that stores background information and biologically oriented identification data, and that processes the biologically oriented identification and biologically oriented measurement data by comparing them. Claim 1 is, therefore, directed towards more than just an abstract idea – it improves airport security by using a processing system that compares previously stored biologically oriented identification data and biologically oriented measurement data to achieve the tangible result of screening passengers to provide for safer aircraft flight. It is respectfully suggested that claim 1, as amended, satisfies 35 U.S.C. §101, and accordingly, the withdrawal of, the rejection of claim 1 pursuant to section 35 U. S. C. §101 is respectfully requested.

Claims 2-5 depend from claim 1 and therefore claim the same methodology using a . processing system that processes biologically oriented identification data and biologically oriented measurement data to achieve the tangible result of screening passengers to provide for safer aircraft flight. It is respectfully suggested that claims 2-5 satisfy 35 U.S.C. §101, and accordingly, the withdrawal of the rejection of claims 2-5 pursuant to section 35 U.S.C. § 101 is respectfully requested.

Claim 15, as amended, specifies a method for screening passengers for a passenger aircraft flight. According to the method of claim 15, a voluntary consent to perform a background check is obtained and a data record that includes information from the background check is formed. Then, a passenger aircraft flight is scheduled as one of a plurality of regularly scheduled flights. When a person wants to take the

Art Unit: 2121

flight, prior to the flight, a processing system determines whether the person is associated with a formulated data record. If the person is not so associated, participation in the flight is denied. The method of claim 15, as amended, therefore, achieves the tangible result of screening potential passengers before they board an aircraft flight, to provide safer air travel. Accordingly, it is respectfully suggested that claim 15 satisfies 35 U.S.C. § 101, and the withdrawal of the rejection of claim 15 pursuant to section 35 U.S.C. § 101 is respectfully requested.

Claim 16 depends from claim 15 and therefore embodies the same methodology as claim 15. It is, therefore, respectfully suggested that claim 16 satisfies 35 U.S.C. §101, and accordingly, the withdrawal of the rejection of claim 16 pursuant to section 35 U.S.C. § 101 is respectfully requested.

Examiner's response:

Para 11 applies. Albeit trivial, the subject claims can be implemented with pencil and paper. The 35 USC 101 rejection remains.

In reference to Applicant's argument:

Claim 1, as amended, specifies obtaining biologically oriented identification data. The specification provides examples of biologically oriented identification data such as retinal scan information, facial scan information, fingerprint information or other unique biological identification information. Thus, biologically oriented information data must be obtained directly from a person's body. Claim 1 also specifies obtaining biologically oriented measurement data before a flight. Thus, claim 1 requires obtaining biologically oriented information from a person at least two times before the person can board a flight.

Yagesh only discloses using a simple photo, nationality information or information pertaining to the sex of a potential passenger to screen a passenger. This information in the Yagesh database is not the biologically oriented information data required by claim 1. Thus Yagesh fails to teach or suggest the use of biologically oriented information data or the use of biologically oriented measurement data. Further, the system of Yagesh obtains its information - a photo, nationality information or information relating to sex -- only once from a potential passenger. The system of claim 1 requires that biological information be obtained twice from a potential passenger.

Examiner's response:

Para 11. applies. The claims and only the claims form the metes and bounds of the invention. Claim 1 is "general" about biological information and hence any data related to a human being would be applicable. All of Yagesh information is related to a human being and therefore "biological". The requirement that biological information be "obtained twice" is not claimed in claim 1. First Office Action applies.

Art Unit: 2121

In reference to Applicant's argument:

Claim 7 is a system counterpart to claim 1. It also requires the use of biologically oriented identification data and biologically oriented measurement data, as well as a processing system that receives both sets of biologically oriented data. As previously described, Yagesh fails to teach or suggest the use of biologically oriented data and also fails to teach or suggest the use of two sets of biologically oriented data, including biologically oriented identification data and biologically oriented measurement data.

Examiner's response:

Above comments related to claim 1 apply.

In reference to Applicant's argument:

The Examiner alleges that claim 8 of Yagesh discloses, the invention of claim 15. Claim 8, however, merely discloses comparing recorded information with a representative template to determine whether a passenger poses a threat. It does not teach or suggest denying participation in flight based on whether a person is associated with a data record in a database.

Examiner's response:

Para 11 applies. To one of ordinary skill in the art, if there is a threat, one is going to remove the threat. Yagesh so states this obvious conclusion @ p 0019.

In reference to Applicant's argument:

Claim 17 is a system counterpart of claim 15. As previously described, Yagesh fails to teach or suggest the use of biologically oriented data and also fails to teach or suggest the limitations of claim 15.

Examiner's response:

Applicant did not state an objection to the First Office Action regarding claim 15.

Comments related to claim 1 apply. First Office Action applies.

Examination Considerations

9. The claims and only the claims form the metes and bounds of the invention.

"Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

10. Examiner's Notes are provided to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

11. Examiner's Opinion: Paras 9. and 10. apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Any data related to an element, living or dead, can be biological data.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

14. Claims 1-23 are rejected.

Correspondence Information

Any inquiry concerning this information or related to the subject disclosure should be directed to the Examiner, Joseph P. Hirl, whose telephone number is (703) 305-1668. The Examiner can be reached on Monday – Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the

Art Unit: 2121

Examiner's supervisor, Anthony Knight can be reached at (703) 308-3179.

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,

Washington, D. C. 20231;

or faxed to:

(703) 746-7239 (for formal communications intended for entry);

or faxed to:

(703) 746-7290 (for informal or draft communications with notation of "Proposed" or "Draft" for the desk of the Examiner).

Note: During the last two weeks of October 2004, Art Unit 2121 will move to Carlyle, Randolph Building, 5th floor and my phone and fax number will change to: 571-272-3685 and 571-273-3685, respectively. Similarly, Anthony Knight's phone and fax numbers will change to: 571-272-3687 and 571-273-3687.



Joseph P. Hirl

October 4, 2004



Anthony Knight
Supervisory Patent Examiner
Group 3600